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February 21, 2023

File No. 53439.02

Via ECF

The Honorable James B. Clark III, U.S.M.J.
United States District, District of New Jersey
Martin Luther King U.S. Court House Building
50 Walnut Street
Newark, New Jersey 07102

Re: LiveUniverse, Inc. v. Rene Muijrrers, et als
Docket No.: 2:22-cv-04918-ES-JBC

Dear Judge Clark:

In its Letter Order dated February 14, 2023 (Doc. 35), the Court requested a joint letter on the status of this matter in light of the dismissal in *Palisades Capital, Inc. v. Muijrrers, et al*, Case No. 21–20054–ES–JBC.

Counsel for Defendants Rene Muijrrers and ICONV (the "ICONV Defendants"); Wayne Anastasia and Techie Hosting, Inc. (the "Techie Defendants"); and ViralHog, LLC, Ryan Bartholomew, Brent Maggio, and KMMT, LLC (the "Montana Defendants") submit the following letter in response to the Court's request.¹

Counsel for the above-named Defendants conferred on February 17, 2023 and settled on a proposed briefing schedule to present to the Court. Counsel for the Techie Defendants emailed Mr. Howard Gutman, local counsel for LiveUniverse Inc., on the same day, asking to set up a call to discuss Defendants' proposal ahead of submitting a joint letter. Receiving no answer, counsel for the Techie Defendants then called Mr. Gutman on Tuesday, February 21, 2023. That call was not answered, and the Techie Defendants' counsel left a voicemail.

Mr. Gutman then emailed the following to counsel for Defendants on the afternoon of February 21:

¹ This letter is written without prejudice to or waiver of any Defendants' defenses including, but not limited to, those related to ineffective or lack of service of process, or lack of jurisdiction.

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From: howardgutman@aol.com <howardgutman@aol.com>
Sent: Tuesday, February 21, 2023 1:55 PM
To: Catherine Derenze <cderenze@litedepalma.com>; Elvira M. Palomino <EPalomino@litedepalma.com>;
james.rehberger@lewisbrisbois.com; denise.mcgonigle@lewisbrisbois.com; ndustin@norris-law.com;
mariaisabel.guerrero@nyattyatlaw.com
Subject: Live Universe v Muijers et. al. 2:22-cv-04918-ES-JBC

With the Palidsades dismissal the Magistrate requested an update and I can provide the following from plaintiff's perspective,

"In response to the motion to dismiss, plaintiff would expect to detail the factual basis for jurisdiction as to each defendant. Some of this material is not in the complaint, and plaintiff was reviewing an application to amend. Since the original motion has been terminated, it would seem to be procedurally most straightforward to allow plaintiff to amend, set forth its grounds for jurisdiction, make any other changes, and have defendant respond to that. We believe that course would ultimately reduce motion practice and save time for the Court and the parties. Plaintiff seeks permission to provide an amended complaint which would address jurisdiction and some other areas or application to do so within 30 days. Please note that I am local counsel and plaintiff expects to engage other counsel to replace my office."

Would you kindly incorporate the same into a joint letter to the Magistrate.

Law Office of Howard Gutman
230 Route 206, St. 307,
Flanders, New Jersey 07836
295 Madison Avenue, Fl. 12,
New York, New York 10017
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*If I have omitted anyone in this mailing, kindly forward it to them.

Plaintiff appears to wish to amend its Complaint, and Mr. Gutman indicates he will be replaced as local counsel for LiveUniverse. The ICONV and Montana Defendants in particular oppose allowing Plaintiff to amend the Complaint for reasons including, but not limited to, futility in establishing personal jurisdiction.

After receiving feedback from Mr. Gutman on a draft of this letter, Defendants propose the following schedule, which is acceptable to Plaintiff:

- Plaintiff will have 60 days in which to both obtain new local counsel, if it chooses to do so, *and* file a motion for leave to amend the Complaint. If Plaintiff files such a motion within 60 days, Defendants will have the opportunity to respond and Plaintiff may then reply according to standard briefing deadlines. Any discovery or other deadlines to respond to the initial Complaint would be stayed pending the ruling on the motion for leave to amend.
- If Plaintiff does not file a motion for leave to amend the Complaint by the end of the 60 day period, served Defendants will then have 30 days to file (or in the Montana Defendants case, refile) motions to dismiss the initial Complaint. The Montana Defendants' Motion to Dismiss

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(Doc. 7) was administratively terminated by the Court in its November 3, 2022 letter order (Doc. 31). That letter order allowed the Montana Defendants to request reinstatement of their Motion to Dismiss via a letter to the Court. However, in light of the developments in the *Palisades* matter, the Montana Defendants ask permission to file an Amended Motion to Dismiss. This will allow the Montana Defendants to address how developments in *Palisades* may effect some of the arguments raised in their initial Motion to Dismiss. Plaintiff would have 30 days to respond to any motions to dismiss, and Defendants would have 21 days to file reply briefs in further support of their respective motions to dismiss. Any discovery would be stayed pending a ruling on the motions to dismiss.

We appreciate the Court's consideration.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH, LLP

s/ James S. Rehberger

James S. Rehberger, Esq.

WORDEN THANE P.C.

s/ Martin Rogers

Martin Rogers, Esq. *Admitted Pro Hac Vice*

LITE DEPALMA GREENBERG & AFANADOR, LLC

Attorneys for Techie Hosting, Inc. and Wayne Anastasia

s/ Catherine Derenze

Catherine Derenze, Esq.

NORRIS MCLAUGHLIN P.A.

Attorneys for Rene Muijrers and ICONV

s/Nicholas Duston

Nicholas Duston, Esq.

JSR

cc: All counsel of Record (via ECF)